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Reinhart Boerner Van Deuren P.C.

By: 

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Date: January 30, 2007

**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE BOARD OF PATENT APPEALS AND INTERFERENCES**

In re Application of:

Daniel B. Gibbs

Application No.: 10/626,412

Filed: July 24, 2003

Art Unit: 3635

Examiner: Jeanette E. Chapman

For: APPARATUS AND METHOD FOR
SETTING AND MAINTAINING THE
DIMENSIONS OF A DOOR FRAME

APPELLANT'S APPEAL BRIEF

Mail Stop Appeal Brief - Patents
Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

Dear Sir:

In support of an appeal from the final rejection dated August 3, 2006, and the
Notice of Appeal filed on November 30, 2006, Appellant now submits this Appeal Brief.

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Real Party In Interest

The patent application that is the subject of this appeal is owned by the inventor, Daniel B. Gibbs.

Related Appeals and Interferences

There are no appeals or interferences that are related to this appeal.

Status of Claims

Claims 1-26 were finally rejected in the Office Action mailed on August 3, 2006. Claims 6 and 13 have been cancelled and this appeal concerns only Claims 1-5, 7-12, and 14-26.

Status of Amendments

The last amendment in this application was mailed on May 15, 2006. The amendment was entered. There are no pending amendments

Summary of Claimed Subject Matter

The present application is directed to an apparatus and method for setting and maintaining the dimensions of a door frame. Claims 1, 9 and 10 are independent apparatus claims. Claim 24 is an independent method claim. No claim elements in the independent claims of this application are in means plus function or step plus function format.

Apparatus Claims

Applicant's invention is a device for setting a door frame in position before adjacent walls are built and for maintaining the dimensions of the door frame during the building of the adjacent walls. Embodiments of the invention include two extension

assemblies. See Specification, paragraph [0021]. Embodiments may include two head plates, 26, 58 with facing edges 32, 60, respectively, which are designed to fit against the opposite sidewalls of a door frame. Specification, paragraphs [0045], [0048] and [0049]. The head plates include a notch 34, 62, for engaging the sidewalls of a door frame, as shown in Fig. 3. The head plates are attached respectively to extensions or arms 22, 24 which adjustably engage to provide one of a plurality of predetermined widths between the facing edges, thus allowing the distance between the sidewalls to be set with precision as the door frame is installed. Specification, paragraphs [0044] and [0049].

One of the arms is provided with a series of apertures (72, 74, 76, 78, etc.) and the other arm is provided with a double end push button or adjustment mechanism 30. Specification, paragraphs [0044] and [0046], and [0052]. The adjustment mechanism 30 has one or two retractably engageable members or buttons 50, 54 that interface with one or two of the apertures. Specification, paragraph [0047] and Fig. 3. The apparatus is adjustable, lightweight, and easily portable by hand from worksite to worksite. The arms 22, 24 are preferably hollow. Specification, paragraph [0023] and Figs. 1-3.

The apertures in the arm are preferably equally spaced about 180° apart on the arm, i.e., the apertures are diametrically opposed so that the adjustment mechanism engages two apertures at once. Specification, paragraph [0029] and Fig. 3. This adds stability in holding the door frame in position. The outer arm and its apertures are preferably marked with measuring indicia, 100, 102, 104, etc., and are preferably about two inches apart. Specification, paragraph [0052]. The headplates may each include a positioning finger 36, 64, for use in positioning and squaring the headplate against a

vertical sidewall of a door frame. Specification, paragraphs [0045] and [0049]. Thus, each limitation of the apparatus claims is fully supported in the application as filed.

Method Claim

The limitations of the method Claim 24 find support in the application in paragraphs [0034] and [0035]. Thus, the application supports the Claim 24 limitation of a method for setting and maintaining the dimensions of a door frame, as recited in the claim. The steps include positioning and anchoring a first sidewall of a door frame to a surface, such as a floor, and abutting the first head plate of the door frame setter apparatus against the first sidewall of the door frame. The method includes a step of extending the door frame setter apparatus a precise, predetermined length in accordance with measuring indicia present upon the door frame setter apparatus. The method also includes a step of abutting a second sidewall of the door frame against the second head plate of the door frame setter apparatus, and anchoring the second sidewall of the door frame.

Grounds of Rejection to be Reviewed on Appeal

The grounds of rejection to be reviewed on appeal are whether there is error in the rejection of Claims 1-5, 7-12, and 14-26 under 35 U.S.C. § 103(a) as unpatentable over U.S. Pat. No. 5,534,095 to Charles Eicher ("Eicher") in view of U.S. Pat. No. 5,653,415 to Artur Schwörer ("Schwörer"), in view of U.S. Pat. No. RE32815 to Alfred Smith ("Smith").

Argument

Appellant appeals the final rejection of Claims 1-5, 7-12, and 14-26 under section 103(a) as being unpatentable in view of the references cited.

Section 103(a), Claims 1-5, 7-12, and 14-26

Claims 1-5, 7-12 and 14-26 are rejected as unpatentable over U.S. Pat. No. 5,534,095 to Charles Eicher ("Eicher") in view of U.S. Pat. No. 5,653,415 to Artur Schwörer ("Schwörer"), in view of U.S. Pat. No. RE32815 to Alfred Smith ("Smith"). The rejection states that the inventions in the claims are obvious in view of the cited art. Appellant appeals the rejection of the claims. Appellant argues that the rejection of all claims is improper because of the use of hindsight and the improper combination of references. Appellant also argues that even with the improper combination, the references do not teach or suggest all the limitations of the claims.

a. The references against Claims 1-5, 7-12, and 14-26 are improperly combined

Appellant argues that the rejections under Section 103(a) are improper because the rejections fail to articulate a reasonable rationale for combining the references. The rejections are also improper because the rejections fail to articulate a level of ordinary skill in the art and thus cite art that is not analogous to the present invention. Finally, Appellant argues that the principle of operation of the primary reference is changed by application of the secondary references to the primary reference.

It is basic that to show obviousness under Section 103(a), the Patent Office must follow the standard of patentability enunciated by the Supreme Court in *Graham v. John*

Deere, 383 U.S. 1 (1966), and repeated in M.P.E.P. Section 2141(I). In examining an application for patent, is the policy and responsibility of the Patent Office to

- (A) Determine the scope and contents of the prior art;
- (B) Ascertain the difference in scope between the prior art and the claims at issue;
- (C) Resolve the level of ordinary skill in the art; and
- (D) Evaluate evidence of secondary considerations.

The Office Actions in the present application fail to follow the rules of the Patent Office in arriving at the rejections which are herein appealed.

i. The Office Actions do not articulate the level of ordinary skill in the art

Claim 1 of the present application concerns an apparatus for setting and maintaining the dimensions of a door frame. Nowhere in the Office Actions is there a statement concerning the level of ordinary skill in the art. It is Appellant's opinion that the failure to follow this rule may have led to the other errors that are herein appealed. These additional errors concern the use of prior art that is not related to or analogous to the present application. Additionally, application of the non-analogous prior art changes the principle of operation of the primary reference that is applied in the Office Actions. Accordingly, there is error in the rejection of claims in the application.

ii. The cited art necessary to show all claim limitations is completely outside the field of endeavor of the present invention

The Office Actions cite U.S. Pat. No. 5,534,095 to Charles Eicher ("Eicher") as the primary reference. Eicher concerns an adjustable door buck spreader having internally threaded rods and thus infinitely adjustable widths. The Office Action admits

that Eicher does not teach all the limitations of the claimed inventions. See final Office Action, mailed August 3, 2006, p. 3, second full paragraph. Therefore, U.S. Pat. No. 5,653,415 to Artur Schwörer ("Schwörer") is also cited. Schwörer concerns an adjustable height support for shuttering in the building trade. Schwörer discloses an apparatus in which a first rod is inserted into a second rod. The relative positions of the rods are fixed by means of apertures through both rods and a pin through the apertures. See Fig. 1 and col. 3, lines 1-6. Eicher and Schwörer concern prior art in building trades. The combination of Eicher and Schwörer does not teach all the limitations of the present invention, since neither teaches or suggests, among other limitations, a first arm with an indexing mechanism and a second arm with a plurality of indexing apertures.

The Office Action then cites U.S. Pat. No. RE32815 to Alfred Smith ("Smith"). Smith concerns a height-adjustable crutch, a crutch for helping an injured person move about. The crutch better shows a first rod with a plurality of apertures, while a second rod has springs and detents that can interface with the first rod. Smith is classified in international class A61H, Physical Therapy Apparatus, and U.S. Class 135/69, for extensible canes, sticks, crutches and walking aids. This art is clearly not analogous to Eicher and Schwörer. Applying Smith to the rejection violates the Office's rule against non-analogous art. See M.P.E.P. 2141.01, stating that in order to rely on a reference, it must be analogous art. This section also states that to in order to rely on a reference as a basis for rejection, the reference must be in the field of the applicant's endeavor, or reasonably pertinent to the particular problem with which the inventor was concerned.

Looking at the present invention, the problem which Mr. Gibbs set out to solve, as stated in the present application, paragraph [0016], was to provide a cost effective and efficient apparatus and method for precisely setting and anchoring a door frame in position before adjacent walls are built. Canes and the crutches of Smith are not in this field of endeavor and are not reasonably pertinent to the problem of setting and anchoring door frames in position. Smith is not analogous art and may not be used in rejecting the claims of the present application. Accordingly, there is error in the rejection of claims in the application.

iii. The Office Action fails to articulate sufficient rationale for combining the references.

In order to combine references, and to guard against hindsight, a rejection must suggest the desirability of the combination. M.P.E.P. 2143.01. On this point, the final Office Action states that both Eicher and Schwörer disclose an adjustable device whereby the distance between first and second facing edges may be varied. See Office Action, p. 4, lines 17-20. The Office Action does not however, state why it would have been obvious to combine Eicher and Schwörer. If there is no explanation of the teaching, motivation, or suggestion that would have led one to combine references, courts infer that hindsight was used to conclude the invention was obvious. *In re Rouffet*, 149 F.3d 1350, 1358 (Fed. Cir. 1998). See also M.P.E.P. 2143.01, citing *In re Rouffet*.

As to the combination with Smith, the Office Action states that it would have been obvious to modify Eicher to include an alternative adjustment means incorporating indexing apertures to measure and set specific door frame sizes "as shown by the two

secondary references [Schwörer and Smith] to lock the measurements in place as shown by Smith." Office Action, p. 5, lines 14-17.

Because Smith's crutches are so far afield from the present invention, the rationale given for combining the references is inadequate. The rationale is also inadequate for other reasons. Smith's crutch reference does not show measurements as stated in the rationale, and also is not directed to measuring and setting specific door frame sizes. No rationale whatsoever is provided for combining Eicher with Schwörer. Appellant argues that one would not be motivated to combine Eicher with Schwörer for the simple reason that Eicher allows much more flexibility in adjusting than does Schwörer. There is insufficient rationale, or no rationale, advanced for the combination of references used in rejecting the claims. Accordingly, there is error in rejecting the claims.

iv. If the references are combined, the combination changes Eicher's principle of operation

If the proposed modification or combination of the prior art would change the principle of operation of the prior art invention being modified, then the teachings of the references are not sufficient to render the claims *prima facie* obvious. M.P.E.P. 2143.01 (VI) (emphasis in the original). The Office Action proposes to modify Eicher by using the apertures of Schwörer or Smith. The combination, as stated in the Office Action, would allow a user to adjust the width of the apparatus in discrete amounts, namely, the distance between adjacent pairs of apertures. Office Action, p. 4, lines 11-16.

Eicher, however, teaches a door buck spreader that is adjustable to every standard, and some non-standard, door buck, and capable of rigidly supporting the door buck

during transportation via wheels incorporated within the spreader itself. Eicher, col. 2, lines 30-34. The spreader includes central threaded rod 12 and hand adjustment nut 14, allowing the user to spread apart the apparatus any desired distance, and thus the door buck, by turning the adjustment nut. See Eicher, col. 3, paragraph at lines 42-56.

Changing the central threaded rod and nut to arms with fixed apertures changes the operating principle of Eicher, because the device will now be limited to the specific distances that are set by use of particular apertures. The additional threaded rods and grip feet 38, 42 on the side (see Figs. 1 and 2), are not used for further fine extensions, but for gripping the back side of the door buck 100. See Fig. 2 and col. 3, lines 57-67.

Accordingly, modifying Eicher with either or both of Schwörer or Smith changes Eicher's the operating principle in that it will not be possible for Eicher to accommodate doors of any size by adjusting the width of the apparatus using only Schwörer's or Smith's fixed apertures in the arms. Accordingly, there is error in the rejection of the claims.

b. The references do not teach or suggest all the limitations of the claims

Claims 1-5, 7-12, and 14-26. Appellant argues above that the references cited in the Office Actions are improperly used. In addition, the references do not teach or suggest all the limitations of the inventions recited in Claims 1-5, 7-12, and 14-26. The principal reference is U.S. Pat. No. 5,534,095 to Charles Eicher ("Eicher"). This reference concerns a door buck spreader, used to support and transport a door buck from its time of construction to its time of final installation. See Abstract. The claims of the present application, however, recite an apparatus or a method for setting and maintaining

the dimensions of a door frame, not a door buck. Door bucks refer to the jambs of a door frame, not to the frame itself. See U.S. Pat. No. 3,851,868, col. 1, lines 5-10, referenced in Eicher. The Office Action admits the difference, that Eicher does not teach or disclose door frames, when it argues that "[n]othing prevents the device of Eicher from being used as a door frame spreader." Office Action, p. 7, line 2. While nothing may prevent Eicher from being used as a door frame spreader, only with hindsight would one apply Eicher to this problem.

Thus, the references do not teach or suggest all the limitations of Claims 1-24, since the primary reference, Eicher, refers to door bucks. Schwörer, the second reference, refers to an adjustable height ceiling support, while Smith, the third reference, concerns crutches. Without hindsight, there is nothing to refer to Eicher to a door frame spreader. Without Eicher, Schwörer and Smith do not teach or suggest doors, let alone the claims of the present application. The specific limitations not found in the references are discussed in the groupings of claims below. In addition, the impropriety of the combination of references was discussed above.

Claims 1, 4, 5, 8, 9, 14 and 21

As admitted in the Office Action, Eicher does not teach an apparatus for setting and maintaining the dimensions of a door frame. Numerous other limitations are also not found in Eicher, such as a first arm having a plurality of indexing apertures, and a second arm having an adjustment mechanism (and not having a plurality of indexing apertures). Another particular claim limitation not found in Eicher is that the adjustment mechanism and the plurality of indexing apertures are to be used to facilitate the installation of door

frames. Accordingly, there is error in the rejection of Claims 1 and 9. Claims depending from Claims 1 and 9 are also allowable, including at least Claims 4, 5, 8, 9, 14 and 21.

Claims 2 and 11

The Office Action gives no rationale for combining Eicher with Schwörer. Because there is thus no teaching, motivation, or suggestion for combining the references, the combination is improper. Eicher does not teach or suggest a measuring indicia as recited in Claim 2 and Claim 11. Thus, there is error in the rejection of Claims 2 and 11.

Claims 3, 12 and 23

There is no teaching or suggestion in any of Eicher, Schwörer, or Smith for spacing measuring indicia at two-inch intervals. Accordingly, the references fail to teach or suggest all the limitations of Claims 3, 12 and 23. There is error in the rejection of Claims 3, 12 and 23.

Claims 7 and 16

Eicher does not disclose a positioning finger extending outward from a side of an edge of the claimed facing plate, as recited in Claims 7 and 16. The rejection cites Eicher, the object corresponding to numeral 30 in Fig. 1, as teaching this limitation. Numeral 30, however, is described as a spacer, and is seen on both sides of the facing plate. Spacer 30 clearly functions to allow Eicher's apparatus to accommodate a door buck 100 that is deeper than a standard door buck. See Figs. 1-2 and specification, col. 3, lines 57-61. Eicher does not teach or suggest the claimed positioning finger. Accordingly, there is error in the rejection of Claim 7 and Claim 16.

Claims 10, 15, 17, 18, 19, 20 and 22

The adjustment mechanism of Eicher does not allow the distance between the first and second facing edges to be set to a desired one of a plurality of discrete distances. Eicher depends on the continuous movement of the threaded rods for infinitely small adjustments, and does not teach using discrete adjustments or moving discrete distances. Accordingly, there is error in the rejection of Claim 10. There is also error in certain claims depending from Claim 10, Claims 15, 17, 18, 19, 20, and 22.

Claim 24

Claim 24 is an independent method claim, and includes numerous limitations that are not found in Eicher, or in the additional references cited. The first step of the method is to position and anchor a first sidewall of a door frame to a surface. Since Eicher, Schwörer, and Smith do not teach or suggest a door frame, this step, and subsequent steps and that refer to the door frame, are not taught or suggested in the references. Accordingly, it is error to reject Claim 24. The rejection should be reversed.

Claim 25

Claim 25 depends from Claim 1, and recites a further limitation that the door frame spreader apparatus of Claim 1 may be used at any position from the bottoms of the side walls to the tops of the side walls. The apparatus of Eicher includes wheels so that it may be used to transport door bucks, as well as to support them. See Fig. 9 and also the specification, col. 2, lines 30-35 and 43-46, and col. 5, lines 12-15. This makes the door buck spreader of Eicher very heavy and unsuitable for use off the ground. In any event,

there is no teaching or suggestion in Eicher of using the door buck spreader at any location other than on the ground, where wheels may be used. The Office Action does not cite any of the references as teaching this limitation and thus fails to make out a prima facie rejection. Accordingly, there is error in the rejection of Claim 25.


Claim 26

The Office Action also makes no specific rejection of Claim 26 and thus also fails to make out a prima facie rejection of Claim 26. This claim recites the door frame spreader apparatus of Claim 1, in which the plurality of discrete distances comprises at least three different nominal standard widths of doors. As noted, Eicher only refers to door bucks, and Schwörer and Smith do not even mention doors. Accordingly, there is error in the rejection of Claim 26.

Conclusion

Appellant has shown that the rejection of Claims 1-5, 7-12, and 14-26 under 35 U.S.C. §§ 103(a) is error. Appellant earnestly requests that the Board reverse the rejections of Claims 1-5, 7-12, and 14-26 and allow the claims of the application.

Respectfully submitted,



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Date: January 30, 2007

CLAIMS APPENDIX

1. (Currently Amended) An apparatus for setting and maintaining the dimensions of a door frame having opposing first and second sidewalls each having a doorstop mounted thereupon, comprising:

a first head plate including a first facing edge for engagement with a first sidewall of a door frame, said first facing edge having a notch located therein for admitting a first doorstop mounted on the first sidewall of the door frame;

a first arm connected to said first head plate at a side opposite said first facing edge;

a second head plate including a second facing edge for engagement with a second sidewall of the door frame, said second facing edge having a notch located therein for admitting a second doorstop mounted on the second sidewall of the door frame;

a second arm connected to said second head plate at a side opposite said second facing edge, said second arm being adjustably engageable with said first arm, one of said first arm and said second arm including a plurality of indexing apertures; and

an adjustment mechanism associated with the other of said first arm and said second arm, said adjustment mechanism comprising at least one retractably engageable member for selectively releasable engagement with a selected one of said plurality of indexing apertures to lock said first arm in a corresponding one of a plurality of discrete positions relative to said second arm to thereby establish the distance between said first and second facing edges, wherein said plurality of discrete positions allowing said apparatus to be used to facilitate the installation of door frames to accommodate doors having one of a plurality of standard widths.

2. (Original) The apparatus as defined in Claim 1, wherein at least one of said first arm and said second arm includes measuring indicia located thereon.

3. (Original) The apparatus as defined in Claim 2, wherein said measuring indicia are longitudinally spaced at two-inch intervals along one of said first arm and said second arm.

4. (Previously presented) The apparatus as defined in Claim 1, wherein said plurality of indexing apertures comprise a series of diametrically opposed pairs of indexing apertures.

5. (Previously presented) The apparatus as defined in Claim 4, wherein said other of said first arm and said second arm comprises a pair of diametrically opposed apertures defined transversely therethrough, said adjustment mechanism comprising a pair of retractably engageable members located in said pair of diametrically opposed apertures, said retractably engageable members being biased to retractably extend through said pair of diametrically opposed apertures and retractably engage a selected pair of said diametrically opposed pairs of indexing apertures in said one of said first arm and said second arm.

6. (Cancelled).

7. (Original) The apparatus as defined in Claim 6, wherein said first head plate further includes a positioning finger extending outward from a side of said facing edge in a direction opposite said connection to said first arm, and wherein said second head plate further includes a positioning finger extending outward from a side of said facing edge in a direction opposite said connection to said second arm.

8. (Previously presented) The apparatus as defined in Claim 6, wherein said first arm is telescopically engaged with said second arm, at least a portion of said one of said first arm and said second arm fitting within said other of said first arm and said second arm.

9. (Original) An apparatus for setting and maintaining the dimensions of a door frame, comprising:

a first head plate, wherein said first head plate includes a facing edge defining a notch and a positioning finger extending outward from a side of said facing edge;

a first hollow arm, said first hollow arm having a first end and a second end, wherein said first end is connected to said first head plate opposite said notch;

a second head plate, wherein said second head plate includes a facing edge defining a notch and a positioning finger extending outward from a side of said facing edge;

a second hollow arm, said second hollow arm having a first end and a second end, wherein said first end is connected to said second head plate opposite said notch, and wherein said first hollow arm and said second hollow arm are telescopically engaged at said second ends;

a plurality of pairs of diametrically opposed apertures longitudinally spaced along a length of said second hollow arm;

measuring indicia located on said second hollow arm and corresponding to each of said plurality of pairs of diametrically opposed apertures; and

an adjustment mechanism disposed within said second end of said first hollow arm, said adjustment mechanism being biased to retractably engage said plurality of pairs of diametrically opposed apertures for locking said first hollow arm in any of a plurality of positions relative to said second hollow arm, said plurality of positions allowing the apparatus to be used with door frames having a plurality of dimensions.

10. (Previously presented) An apparatus for setting and maintaining the dimensions of a door frame having opposing first and second sidewalls, comprising:

a first extension assembly, said first extension assembly including a first head plate including a first facing edge, said first facing edge of said first head plate for engagement with a first sidewall of the door frame;

a second extension assembly, said second extension assembly including a second head plate including a second facing edge, said second facing edge of said second head plate for engagement with a second sidewall of the door frame opposite the first sidewall of the door frame, said second extension assembly being adjustably engageable with said first extension in a manner whereby the distance between said first facing edge and said second facing edge can be varied; and

an adjustment mechanism associated with said first extension assembly and said second assembly to allow the distance between said first facing edge and said second facing edge to be set to a desired one of a plurality of discrete distances to facilitate the installation of door frames to accommodate doors having one of a plurality of standard widths.

11. (Previously presented) The apparatus as defined in Claim 14, wherein at least one of said first arm and said second arm includes measuring indicia located thereon.

12. (Original) The apparatus as defined in Claim 11, wherein said measuring indicia are longitudinally spaced at two-inch intervals along said one of said first extension assembly and said second extension assembly.

13. (Cancelled).

14. (Previously presented) The apparatus as defined in Claim 10, wherein said first extension assembly further comprises a first arm, and wherein said second extension assembly further comprises a second arm, said first arm being connected to said first head plate on a side opposite said first facing edge and said second arm being connected to said second head plate on a side opposite said second facing edge, one of said first and second arms comprising a plurality of indexing apertures and the other of said first and second arms comprising an adjustment mechanism comprising at least one retractably engageable

member for selectively releasable engagement with a selected one of said plurality of indexing apertures to lock said first arm in a corresponding one of a plurality of discrete positions relative to said second arm to thereby establish the distance between said first and second facing edges.

15. (Previously presented) The apparatus as defined in Claim 14, wherein said first facing edge has a notch located therein for admitting a first doorstop mounted on the first sidewall of the door frame and wherein said second facing edge has a notch located therein for admitting a second doorstop mounted on the second sidewall of the door frame.

16. (Original) The apparatus as defined in Claim 15, wherein said first head plate further includes a positioning finger extending outward from a side of said facing edge in a direction opposite said connection to said first arm, and wherein said second head plate further include a positioning finger extending outward from a side of said facing edge in a direction opposite said connection to said second arm.

17. (Original) The apparatus as defined in Claim 15, wherein said first arm includes a first end and a second end, and wherein said second arm includes a first end and a second end, said first end of said first arm connected to said first head plate at a side opposite said notch and said first end of said second arm connected to said second head plate at a side opposite said notch, said second end of said first arm adjustably engaged with said second end of said second arm.

18. (Original) The apparatus as defined in Claim 17, wherein at least one of said first arm and said second arm is hollow.

19. (Original) The apparatus as defined in Claim 18, wherein said hollow arm has an inner diameter greater than an outer diameter of the other arm of said first arm and said second arm.

20. (Original) The apparatus as defined in Claim 19, wherein said second end of said first arm is telescopically engaged with said second end of said second arm, at least a portion of one of said second end of said first arm and said second end of said second arm fitting within the other of second end of said first arm and said second end of said second arm.

21. (Previously presented) The apparatus as defined in Claim 20, wherein one of said first arm and said second arm comprises a plurality of indexing apertures, and wherein the other of said first arm and said second arm further includes a pair of diametrically opposed apertures defined transversely through said second end, an adjustment mechanism being disposed between said pair of diametrically opposed apertures, at least a portion of said adjustment mechanism being biased to retractably extend through said pair of diametrically opposed apertures and retractably engage said plurality of indexing apertures.

22. (Original) The apparatus as defined in Claim 21, wherein said retractable engagement of said adjustment mechanism with said plurality of indexing apertures locks said first arm in any of a plurality of positions relative to said second arm, said plurality of positions allowing the apparatus to be used with door frames having a plurality of dimensions.

23. (Previously presented) The apparatus as defined in Claim 21, wherein said plurality of indexing apertures are diametrically opposed pairs of indexing apertures longitudinally spaced at two-inch intervals along a length of at least one of said first extension assembly and said second extension assembly.

24. (Previously presented) A method for setting and maintaining the dimensions of a door frame having opposing first and second sidewalls each having a doorstop mounted thereupon, comprising the steps of:

positioning and anchoring a first sidewall of the door frame to a surface;

providing a first head plate including a first facing edge for engagement with a first sidewall of a door frame and a second head plate including a second facing edge for engagement with a second sidewall of the door frame, said first facing edge having a notch located therein for admitting a first doorstop mounted on the first sidewall of the door frame and said second facing edge having a notch located therein for admitting a second doorstop mounted on the second sidewall of the door frame, said first head plate having a first arm connected thereto at a side opposite said first facing edge and said second face plate having a second arm connected thereto at a side opposite said second facing edge, said first and second arms being adjustably engageable to establish a distance between said first facing edge and second facing edge which is one of a plurality of predetermined distances;

abutting said first facing edge of said first head plate against the first sidewall of the door frame with the doorstop on the first sidewall being accommodated within said notch in said first facing edge;

adjusting the engagement of said first and second arms to establish a distance between said first and second facing edges which is equal to the nominal width of a door to be installed in the door frame;

abutting said first facing edge of said second head plate against the second sidewall of the door frame with the doorstop on the second sidewall being accommodated within said notch in said second facing edge; and

anchoring the second sidewall of the door frame to the surface, the second sidewall being positioned at a precise separation from the first sidewall, as established by said door frame setter apparatus.

25. (Previously presented) The apparatus as defined in Claim 1, wherein said first and second head plates are arranged and configured so that they may be placed into engagement with the first and second sidewalls, respectively, at any position from the bottoms of the first and second sidewalls to a location near the tops of the first and second sidewalls.

26. (Previously presented) The apparatus as defined in Claim 1, wherein said plurality of discrete distances comprises at least three different nominal standard widths of doors.